No. 22,378 ✓

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

VICTOR F. WHITTLESEA, d/b/a
WHITTLESEA BLUE CAB COMPANY

and

AUTOMOTIVE WORKERS & WAREHOUSEMEN, LOCAL NO. 881,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

MARCEL MALLET-PREVOST,
Assistant General Counsel,

FRANK H. ITKIN,
PETER M. GIESEY,
Attorneys,

National Labor Relations Board.

FILED

FEB 5 1968

WM. B. LUCK, CLERK

INDEX

Page
Jurisdiction ---- 1
Statement of the Case ---- 2
  I. The Board's Findings of Fact ---- 2
  II. The Board's Conclusions and Order ---- 6
Argument ---- 7
  Substantial evidence on the record as a whole supports the Board's finding that the Union violated Section 8(b)(2) and (1)(A) of the Act by causing the company to withhold employment from employee Shuman ---- 7
Conclusion ---- 13
Certificate ---- 13
Appendix ---- 14

AUTHORITIES CITED

Cases:
International Brotherhood of Electrical Workers v. N.L.R.B., 181 F. 2d 34 (C.A. 2), affirmed, 341 U.S. 694 ---- 9
Local 771, International Alliance of Theatrical etc., 131 NLRB 1 ---- 12
Lummus Co. v. N.L.R.B., 339 F. 2d 728 (C.A.D.C.) ---- 7
N.L.R.B. v. Allis Chalmers Mfg. Co., ____ U.S. ____, 87 Sup. Ct. 2008-2009 ---- 8
N.L.R.B. v. Brown, 310 F. 2d 539 (C.A. 9) ---- 11
N.L.R.B. v. Cement Masons Local No. 555, 225 F. 2d 168 (C.A. 9) ---- 11
N.L.R.B. v. Die & Tool Makers Lodge No. 113, 231 F. 2d 298 (C.A. 7), cert. denied, 352 U.S. 833 ---- 8
N.L.R.B. v. General Motors Corp., 373 U.S. 734 ---- 7
N.L.R.B. v. International Association of Machinists, Local No. 504, 203 F. 2d 173 (C.A. 9) ---- 8
N.L.R.B. v. Int'l Ass'n of Machinists, 263 F. 2d 796 (C.A. 9) ---- 6
N.L.R.B. v. International Longshoremen's & Warehousemen's Union, 210 F. 2d 581 (C.A. 9) ---- 9
N.L.R.B. v. International Longshoremen's & Warehousemen's Union, 214 F. 2d 778 (C.A. 9) ---- 9
N.L.R.B. v. International Longshoremen's & Warehousemen's Union, Local 12, 378 F. 2d 125 (C.A. 9) ---- 6
N.L.R.B. v. International Union of Automobile Workers, 194 F. 2d 698 (C.A. 7) ---- 8

Cases -- continued

Page

N.L.R.B. v. Jarka Corp. of Phila. Local 1291, ILA, 198 F. 2d 618 (C.A. 3) -------------------------- 8
N.L.R.B. v. Leece-Neville Company, 330 F. 2d 242 (C.A. 6) -- 8
N.L.R.B. v. Local Union No. 450, 281 F. 2d 313 (C.A. 5) --- 8
N.L.R.B. v. Local 490, International Hod Carriers, etc., 300 F. 2d 328 (C.A. 8) ------------------------ 8
N.L.R.B. v. Local 776, IATSE (Film Editors), 303 F. 2d 513 (C.A. 9), cert. denied, 371 U.S. 826 ----- 9,12
N.L.R.B. v. Miami Valley Carpenters District Council, 297 F. 2d 920 (C.A. 6) ------------------------- 9
N.L.R.B. v. A & B Zinman, Inc., 372 F. 2d 444 (C.A. 2)- 8
Radio Officers' Union v. N.L.R.B., 347 U.S. 17 -------- 8
Union Starch & Refining Co. v. N.L.R.B., 186 F. 2d 1008 (C.A. 7), cert. denied, 342 U.S. 815 ---------- 8

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, <u>et seq.</u>):
Section 7 -- 7
Section 8(a)(1) -- 2,6
Section 8(a)(3) -- 2,6,7
Section 8(b)(1)(A) ------------------------------------- 2,7
Section 8(b)(2) -- 2,7,8
Section 10(e) -- 1,6

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22,378

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

VICTOR F. WHITTLESEA, d/b/a
WHITTLESEA BLUE CAB COMPANY

and

AUTOMOTIVE WORKERS & WAREHOUSEMEN, LOCAL NO. 881,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon the petition of the National abor Relations Board, pursuant to Section 10(e) of the National Labor elations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, t seq.),[1/] for enforcement of its order (R. 46-47, 16-28),[2/] issued on

---

/ Pertinent statutory provisions are reprinted infra, pp. 15-16 , as Appendix B.

/ References to the pleadings, reproduced as "Volume I, Pleadings," are designated "R." References to portions of the stenographic transcript of the hearing, reproduced pursuant to Rules 10 and 17 of this Court as "Volume II, Transcript of Record", are designated "Tr." References to the General Counsel's exhibits are designated "G.C. Exh."

December 14, 1966, against respondents Victor F. Whittlesea, doing business as Whittlesea Blue Cab Company (herein, "the Company"), and Automotive Workers & Warehousemen, Local No. 881, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein, "the Union"). The Board's decision and order are reported at 162 NLRB No. 17. This Court has jurisdiction, the unfair labor practices having occurred in Las Vegas, Nevada. No jurisdictional issue is presented.

STATEMENT OF THE CASE

I. The Board's Findings of Fact

The Board found that the Union violated Section 8(b)(2) and (1)(A) of the Act by causing the Company to withhold employment from employee Warden Shuman because he refused to picket other employers or, alternatively, pay the Union a "picketing fee" of $15. In addition, the Board found that the Company violated Section 8(a)(3) and (1) of the Act by discriminating against the employee at the request of the Union. The facts underlying the Board's findings are summarized below:

The Company is engaged in the taxi cab business in Las Vegas, Nevada, and its driver-employees are represented by the Union (R. 17, 18; Tr. 10-12, 13). During early 1966,[3] the Union was engaged in a strike against two taxi cab enterprises (other than respondent Company) in Las Vegas, Nevada, and required its membership -- including respondent Company's

---

[3] All dates hereinafter refer to 1966, unless otherwise indicated.

drivers -- to picket the struck firms or, alternatively, pay the Union a "picketing fee" of $15 (R. 18; Tr. 8, 10-13, 55-58, 62-64, 67, 70, 91-92, 100-103, 105, 126, 148). Thus, during the first week in January, Union Representative Buckley gave Company Personnel Manager Baldwin a list of approximately 50 drivers employed by that Company, and requested him to "send these men over /to the Union Hall/ before they went to work" for "picket duty" (R. 18; Tr. 52-58, 62-64, 70, 91, 111-112, 126). Baldwin, in turn, gave the list to the Company's dispatchers with written instructions that "the men on the list should see the Union before they went to work" (R. 18; Tr. 62). In addition, the Company posted on its bulletin board in the drivers' room a Union notice requiring the employer's drivers "to either walk the picket" line "or pay /a/ $15 replacement fee" to the Union (R. 18; Tr. 12, 57-58, 62-64, 91).[4/]

Warden Shuman, employed by the Company as a taxi cab driver since March 1964, failed to report to the Union for picket duty as required in the posted instructions (R. 18; Tr. 8). On Friday, January 7, Shuman presented himself at the employer's dispatcher window for his "trip sheet" preparatory to starting his shift.[5/] Company Dispatcher Everts

---

[4/] Union Representative Buckley acknowledged before the Board that the Company's drivers could be "relieved of picket duty" by paying a "$15 donation" to the Union (R. 18; Tr. 126).

[5/] The Company has a dispatcher for each of its three shifts, who issues daily "trip sheets" to drivers as they report for work, dispatches the drivers on calls, and transmits orders and other information from management to the drivers. A "trip sheet" contains the employee's name, taxi cab number, and pertinent information relating to the trips he makes that day. A driver, at the end of his shift, turns in this sheet to the Company together with his fare collections. "Trip sheets" are required by local law and taxi cab drivers may not work without one. (R. 18, 20; Tr. 8-9, 19-20, 23, 39, 43-44, 97, 101-102, 103-105, 138-140.)

instead handed the employee a note containing Shuman's name and the instruction: "see Union before going to work" (R. 18; Tr. 8-10, 12, 15-16, 20).[6/] Shuman, unable to work without a "trip sheet" (supra, n. 5), immediately made a telephone call to the Union Hall. When he received no answer, he placed a call to the home of Union Secretary-treasurer Richard Thomas. Thomas was not there, and Shuman left a message that he had called (R. 19; Tr. 9-10).

On Monday, January 10, Shuman -- not having heard from Thomas -- again called the Union Hall, and spoke with Thomas (R. 19; Tr. 9-11). Shuman told the Union official that he "had been held off work" (R. 19; Tr. 10). Thomas, after making inquiry about the matter, then explained to Shuman (Tr. 10): "It was just a little matter of paying /the/ $15 picket fee or walking the picket line." The employee, however, asserted that he saw no reason for this inasmuch as he was not on strike. Thomas replied that the Union's membership had voted for the requirement and "that is the way it is" (Tr. 10). Shuman then stated that "the only course I have got * * * /is/ to take this to the National Labor Relations Board", whereupon Thomas concluded the conversation by telling Shuman that he could "take it any place /he/ wanted" (R. 19; Tr. 10-11, 148).

On the next day, January 11, Shuman called Milford Prine, a Company official, and told Prine that the employee had been denied work because he refused to picket or pay the fee (R. 19; Tr. 13). Prine commented that there was no strike at respondent Company and the employer

---

[6/] On that same day, Company driver Elwood Purdy was similarly told by his dispatcher, Lola Balsen, that he "was supposed to go over to the Union Hall and pay the Union or else /he/ wouldn't drive the next morning" (R. 21; Tr. 99-105, 109). Purdy thereafter made the $15 "contribution" to a Union representative (ibid.).

had a contract with the Union (ibid.). Shuman informed Prine that he had written the Labor Board about this matter, and the Company official then stated "I guess that is about all you can do" (Tr. 13-14). Thereafter, on January 20, Shuman went to the Company's office and asked Prine to explain "how they could hold me off /since/ they weren't on strike" (R. 19; Tr. 15). Prine told the employee (R. 19; Tr. 15-16):

> * * * /the Company/ had nothing personally against /him/, but * * * they can't very well put /him/ to work because * * * possibly /the Union/ would throw a picket line around /the Company/ and stop their whole operation.

Later that day, Shuman informed Prine that he would file unfair labor practice charges against both the Union and the Company (R. 19; Tr. 17).

On the following day, January 21, Company Personnel Manager Baldwin had a note posted on the bulletin board in the dispatchers' room, stating (R. 20; Tr. 58-61, G.C. Exh. 2): "Schuman /sic/ can work".[7/] However, information posted on the bulletin board in the dispatchers' room was not available to the Company's drivers, and neither the Company nor the Union made any effort to inform employee Shuman that he could return to work (R. 20; Tr. 59,62, 64).

Thereafter, on February 11, a Board agent, investigating the unfair labor practice charges filed by Shuman, learned of this notice and so informed the employee. Shuman then called Prine, who told the employee that he could return to work (R. 20; 7, 17, 18). Shuman resumed work that day (ibid.).

[7/] According to Baldwin, he posted this notice following a telephone conversation with Union secretary-treasurer Thomas, wherein each assertedly disclaimed "holding" Shuman off of his job (R. 20; Tr. 58-59).

II. The Board's Conclusions and Order

On the foregoing facts, the Board, in agreement with the Trial Examiner (R. 46-47, 20-22), found that the Union violated Section 8(b)(2) and (1)(A) of the Act by causing the Company to deny employment to Shuman from January 7 to February 11, 1966, because the employee did not report to the Union for picket duty against other employers or, alternatively, pay the $15 fee required by the Union. The Board further found that the Company violated Section 8(a)(3) and (1) of the Act by this discrimination against its employee. The Board therefore ordered the Union and the Company to cease and desist from the unfair labor practices found, to jointly and severally make Shuman whole for any loss of pay sustained by reason of the discrimination against him, and to post appropriate notices (R. 22-28, 47).[8/]

[8/] Respondent Company filed no exceptions to the Trial Examiner's decision, which was adopted by the Board (R. 46). Under Section 10(e) of the Act, "No objection that has not been urged before the Board * * * shall be considered by the Court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." Respondent Company has made no attempt to excuse this failure and, in addition, has not filed an answer to the Board's petition for enforcement in accordance with Rule 34(4) of the Court. The Company is therefore barred from controverting the Board's finding that it violated Section 8(a)(3) and (1) of the Act. See, e.g., N.L.R.B. v. Int'l Longshoremen's & Warehousemen's Union, Local 12, 378 F. 2d 125, 131 (C.A. 9), and N.L.R.B. v. Int'l Ass'n of Machinists, 263 F. 2d 796, 799 (C.A. 9) (and cases cited).

ARGUMENT

SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDING THAT THE UNION VIOLATED SECTION 8 (b)(2) AND (1)(A) OF THE ACT BY CAUSING THE COMPANY TO WITHHOLD EMPLOYMENT FROM EMPLOYEE SHUMAN

Section 8(b)(2) of the Act is explicity directed at the elimination of improper union interference with employee job opportunities. That section, in relevant part, forbids "a labor organization or its agents * * * to cause or attempt to cause an employer to discriminate against an employee in violation of /section 8(a)(3)/ * * * ". The latter section in turn, forbids employer "discrimination in regard to hire or tenure of employement to encourage or discourage membership in any labor organization * * *".[9/] In addition, Section 8(b)(1)(A) makes it an unfair labor practice for a union to restrain or coerce an employee in the exercise of his rights under Section 7 of the Act, including the right to refrain from "any or all" concerted activities (App. B., infra, pp. 15-16).

It is well established that a union violates the foregoing provisions by causing or attempting to cause an employer to discharge or otherwise discriminate against an employee "if the union's action * * * was intended to discipline an individual * * * for violation of union rules, or to encourage individuals to accept the authority of union officers * * * ". Lummus Company v. N.L.R.B., 339 F. 2d 728, 733-734 (C.A.D.C.) (footnotes omitted). Thus, a union may not procure

---

[9/] A proviso to Section 8(a)(3) permits an employer and a union, in certain circumstances, to enter into an agreement requiring employees, as a condition of continued employment, to become and remain members of the union. Respondent Company and the Union did not assert before the Board that Shuman was denied employment under the terms of a valid union-security agreement. Cf., N.L.R.B. v. General Motors Corp., 373 U.S. 734, 734-744.

the discharge of an employee because of his "union-connected activities". N.L.R.B. v. A.B. Zinman, Inc., 372 F. 2d 444 (C.A. 2).[10] And see, Radio Officers Union v. N.L.R.B., 347 U.S. 17, 25-26, 40-42; N.L.R.B. v. Allis Chalmers Mfg. Co., ____ U.S. _____, _____, 87 Sup. Ct. 2008-2009.

It is also well established that an express demand by the union that an employer discriminate against an employee is not required in order to find a violation of Section 8(b)(2). As the Third Circuit stated in N.L.R.B. v. Jarka Corp., 198 F. 2d 618, 621 (C.A. 3):

---

[10] The courts, in agreement with the Board, have repeatedly held that a union violates Section 8(b)(2) -- even under a union-security agreement -- where it causes an employer to discriminate against an employee because he has "violated union rules by working for an 'unfair' employer" (N.L.R.B. v. Local 490, International Hod Carrier, etc., 300 F. 2d 328, 332 (C.A. 8)); or by requiring "any member of the union who had not walked the picket line /to/ be placed at the bottom of the out-of-work list and assessed $7.50 for each tour of picket duty missed" (N.L.R.B. v. Local Union No. 450, 281 F. 2d 313, 316 (C.A. 5)); or because employees did not "contribute their weekly 'donations' to the union's strike fund", as required (N.L.R.B. v. Die & Tool Makers Lodge No. 113, 231 F. 2d 298, 299 (C.A. 7), cert. denied, 352 U.S. 833); or because of an employee's failure to pay a fine or debt owed to a union, or attend a union meeting (N.L.R.B. v. Leece-Neville Company, 330 F. 2d 242, 245-246 (C.A. 6); N.L.R.B. v. International Association of Machinists, Local No. 504, 203 F. 2d 173, 176 (C.A. 9); N.L.R.B. v. International Union of Automobile Workers, 194 F. 2d 698 (C.A. 7); Union Starch & Refining Co. v. N.L.R.B., 186 F. 2d 1008 (C.A. 7), cert. denied, 342 U.S. 815).

> Here there was an adequate showing that the union "caused" the employer to discriminate against the employees as complained. This relationship of cause and effect, the essential feature of Section 8(b)(2), can exist as well where an inducing communication is in terms courteous or even precatory as where it is rude and demanding * * *. It is essentially a question of fact in each case what has caused an employer to discriminate unlawfully against organized or unorganized workers. If the Board finds that the union accomplished this result by its acts, whether verbal or otherwise, the fundamental requirement of Section 8(b)(2) has been met.

Thus, conduct of union representatives, which is "tantamount to a request to discriminate with respect to the terms of" an individual's employment, and "reasonably calculated to bring about that result," violates the Act. N.L.R.B. v. Miami Valley Carpenters District Council, 297 F. 2d 920, 921 (C.A. 6). And see, N.L.R.B. v. Local 776, IATSE (Film Editors), 303 F. 2d 513, 516 (C.A. 9), cert. denied, 371 U.S. 826; N.L.R.B. v. International Longshoremen's and Warehousemen's Union, 214 F. 2d 778, 780 (C.A. 9); N.L.R.B. v. International Longshoremen's and Warehousemen's Union, 210 F. 2d 581, 584 (C.A. 9); International Brotherhood of Electrical Workers v. N.L.R.B., 181 F. 2d 34, 38 (C.A. 2), affirmed, 341 U.S. 694.

The Board, in applying the foregoing principles to the credited evidence in this case (supra, p. 6), properly found that the Union unlawfully caused the Company to deny employment to Shuman, because the employee did not comply with the Union's requirement that he picket other employers or, alternatively, pay the $15 fee. As noted above (supra, p. 6, n. 8), the Examiner's finding, adopted by the Board, that the Company withheld employment from Shuman for this unlawful reason is not controverted here. It is clear that the employer, at the

request of the Union, instructed its drivers to "see the Union before they went to work" and thus comply with the Union's directive (*supra*, p. 3). Driver Purdy was pointedly admonished by the Company's dispatcher "to go over to the Union Hall and pay the Union or else [he] wouldn't drive the next morning" (*supra*, p. 4 , n. 6). Driver Shuman was denied his "trip sheet" by his dispatcher and, instead, instructed to "see [the] Union before going to work" (*supra*, p. 4). Indeed, Company official Prine later admitted to Shuman that the employer was withholding his work because it feared that the Union "would throw a picket line around [the Company] and stop their whole operation" (*supra*, p. 5)[11]

It is also evident that the denial of work to Shuman was at the Union's behest. The Union had determined that its membership must either picket the struck employers or pay the prescribed fee (supra, p. 4). The Company was apprised of this determination, and was requested by the Union to "send these men over [to the Union Hall] before they went to work" (*supra*, p. 3). Shuman, however, failed to comply with the Union's directive and was denied employment (*supra*, p. 4). When the employee, immediately thereafter, informed Union Secretary-treasurer Thomas that he "had been held off work", Thomas acknowledged this discriminatory reason by stating to Shuman: "It was just a little matter of paying [the] $15 picket fee or walking the picket line"

---

[11] Company Comptroller Felegy, in his testimony before the Trial Examiner, explained that the employer's personnel manager had "informed [him] there were 50 or 60 drivers that were to be sent to the Union Hall for clearances on a matter of a strike sanction, to set up * * * pickets or to pay an X number of dollars * * *" (Tr. 91).

(*supra*, p. 4). Indeed, it was not until after Shuman warned his employer that he would file unfair labor practice charges against both the Union and the Company, that a notice was posted at the employer's premises, stating "[Shuman] can work" (*supra*, p. 5).[12]

Before the Board, respondent Union relied heavily upon *N.L.R.B.* v. *Brown*, 310 F. 2d 539 (C.A. 9) (R. 34-35). In that case, the Court found that the employee "was not actually or constructively discharged. He voluntarily left his employment * * * and refused an offer of reinstatement tendered to him prior to the earliest date on which he would have been subject to discharge under the union-security agreement" between the union and the employer (*id.* at 547). The facts are plainly inapposite to those found here. It is manifest that Shuman could not work without a "trip sheet" (*supra*, p. 3 , n. 5), and the Company withheld this document from the employee as a means of compelling him to "see [the] Union" and comply with its directive (*supra*, p. 4). Like Purdy (who paid the $15), Shuman was being compelled to picket or pay the fee if he wanted to work (*supra*, p. 4). "No set words are necessary to constitute a discharge; words or conduct, which would logically lead an employee to believe his tenure had been terminated, are in themselved sufficient" *N.L.R.B.* v. *Cement Masons Local No. 555*, 225 F. 2d 168, 173 (C.A. 9). Moreover, Shuman's repeated efforts to be reinstated, directed toward the Company and the Union, plainly refute the Union's contention that the employee failed "to

---

[12] As shown, this notice was posted in the Company's dispatcher room where it could not be seen by the employee; Shuman was not made aware of his right to return to work until February 11 (*supra*, p. 5).

make inquiry as to whether or not he was held off work * * *" (R. 35).

The Union also argued before the Board (R. 36) that "the denial of work to Shuman was /not/ at the Union's behest * * *". As shown above, the credited evidence in this case amply supports the finding that the Union caused this denial of work. The facts found by the Board in Local 771, International Alliance of Theatrical etc., 131 NLRB 1 (cited by the Union, R. 37), are inapposite here. "/Here/, the Trial Examiner's deduction that respondent /Union/ was the motivating factor affords a logical explanation buttressed by cogent evidence". N.L.R.B. v. Local 776, IATSE (Film Editors), supra, 303 F. 2d at 519.

Under these circumstance, the Board reasonably concluded that the Union's conduct was "tantamount to a request to discriminate with respect to the terms of" Shuman's employment, and "reasonably calculated to bring about this result" (supra, p. 6). In sum, the Board reasonably concluded that the Company unlawfully denied employment to Shuman, at the behest of the Union, because the employee refused to obey the Union's directive (see cases supra, pp. 7, 8, 9).

CONCLUSION

For the reasons stated, it is respectfully requested that the Board's order be enforced in full.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Gounsel,

MARCEL MALLET-PREVOST,
Assistant General Counsel,

FRANK H. ITKIN,
PETER M. GIESEY,
Attorneys,

National Labor Relations Board.

February 1968.

CERTIFICATE

The undersigned certifies that he has examined the provisions of Rules 18 and 19 of this Court and, in his opinion, the tendered brief conforms to all requirements.

Marcel Mallet-Prevost
Assistant General Counsel
National Labor Relations Board.

APPENDIX A

Pursuant to Rule 18(f) of the Rules of this Court, petitioner presents the following table of exhibits. Page references are to Volume II, Transcript of Record:

EXHIBITS	Identified	Offered	Rec'd in Evidence
General Counsel's Exhibits 1(a) through 1(c)	5	5	6
General Counsel's Exhibit No. 2	60	61	61
General Counsel's Exhibit No. 4	87	92	93

APPENDIX B

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, _et seq_.) are as follows:

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3).

UNFAIR LABOR PRACTICES

Sec. 8(a). It shall be an unfair labor practice for an employer --

> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

* * *

> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: _Provided_, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in Section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the begining of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided

in Section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in Section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: Provided further, That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues the initiation fees uniformly required as a condition of acquiring or retaining membership.

* * *

(b) It shall be an unfair labor practice for a labor organization or its agents --

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7:

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership:

* * *